

No. 12518

United States
COURT OF APPEALS
for the Ninth Circuit

TIGHE E. WOODS, Housing Expediter,
Office of the Housing Expediter,
Appellant,

-VS-

JOHN S. BROWN,
Appellee.

BRIEF FOR APPELLEE

Appeal from the United States District Court for the
District of Oregon.

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STATEMENT OF JURISDICTION

Jurisdiction of the United States District Court for the District of Oregon in this case is not disputed. The basis of jurisdiction is set forth in Appellant's Brief.

STATEMENT OF THE CASE

The statement of the case as set forth in the Appellant's Brief (pp. 2 and 3) is not only incomplete but in

one important particular is incorrect. Appellant states in his Brief (p. 3):

“Plaintiff appeals from that part of the judgment which denied restitution to the tenants since *it was based solely on the conclusion of law that the granting of such restitution would constitute imprisonment for debt (R. 13).*” (Emphasis supplied.)

After the conclusion of the trial and the rendition of the Court’s Memorandum Opinion the Plaintiff on July 29, 1949 filed a motion to reconsider the Memorandum Opinion, which motion was argued and considered by the Court on September 6, 1949, and denied by an oral order dated November 25, 1949 (R. 16).

Thereafter the Court made Findings of Fact including the following:

“That since said 1st day of December, 1948 he (defendant) has not been a landlord of said premises nor engaged as landlord in the business of renting housing accommodations” (R. 16).

Based upon the Findings of Fact the Court made Conclusions of Law including the following:

“III.

“That Plaintiff’s prayer for restitution should be denied for the reason that the defendant is no longer a landlord engaged in the business of renting housing accommodations and that such relief would exercise no restraining purpose on the defendant or serve any other equitable purpose, and for the further reason that enforcement of such a judgment by a contempt proceedings would result in imprisonment for debt, thus making this Court an instrument of inequity and injustice.” (R. 17).

On the same date and based upon said Findings of Fact and Conclusions of Law the Court denied plaintiff's prayer for restitution and his prayer for injunction and dismissed the Complaint (R. 18).

SUMMARY

It was Appellee's principal contention in all of the several hearings before the District Court (1) that relief by way of restitution not having been specifically provided in the Housing and Rent Act of 1947, prayer for such relief was addressed to the general equitable jurisdiction of the Court; (2) that it was essential to establish some equitable grounds for invoking the plenary equitable powers of the Court; (3) that the District Court had authority to determine in its own discretion from the facts of this case whether or not the exercise of its equity powers was justified; (4) that where it affirmatively appeared that a decree of restitution could not serve as a restraining influence on the defendant against future violations of the Act or serve any other equitable purpose the Court had authority to deny this relief; (5) that the exercise of the Court's discretion in determining whether or not it should exercise its equity powers in a given case is not subject to review unless it appears that the District Court abused its discretion.

Appellee is making the same contention upon this appeal.

ARGUMENT

Appellant upon the several hearings in the Trial Court ignored the defendant's contention as outlined above and as argued to the Trial Court. It has not only carefully avoided them in its Brief upon this appeal but has mis-interpreted the record in its effort to do so. Appellant states (Brief p. 8):

“In the instant case the Trial Court denied restitution *for the sole reason* that to grant restitution would constitute imprisonment for debt (R. 13).” (Emphasis supplied.)

The Trial Court found as a fact that the defendant had not, since prior to the filing of the Complaint, been a landlord of the premises in question nor engaged as a landlord in the business of renting housing accommodations, and it concluded among other things, that restitution should not be granted under such circumstances because:

“such relief would exercise no restraining purpose on the defendant or serve any equitable purpose.” (R. 17.)

It is conceded that the District Court in a proper case has authority under the applicable provisions of the Housing and Rent Act of 1947 and the decision of the United States Supreme Court in the case of *Porter v. Warner Holding Company*, 328 U.S. 395, to grant restitution as a proper equitable remedy; that this remedy may be granted either with injunctive relief or by itself when circumstances justify it. The reason gen-

erally accepted by the Court for granting the relief of restitution appears in the following characteristic statement in *Creedon v. Randolph*, 165 Fed. (2d) 918 (p. 919):

“That to require restitution of over-charges tends to enforce the law prohibiting them, no one can deny. That it operates to confer a benefit on the tenant . . . does not detract at all from the enforcement effect nor alter its nature. . . . (The administrator) asked for an order of restitution which, if granted, would be in its nature, a mandatory injunction.”

It has been held and it seems to be conceded in the instant case that where it appears from the facts that the danger of future violation by the defendant is non-existent injunctive relief may be denied. *Woods v. Boyle*, 77 Fed. Supp. 883. For precisely the same reason the Court may, when convinced from the facts of the case that no equitable purpose would thereby be served, refuse to grant relief in the form of restitution. As was stated in *Blood v. Fleming*, 161 Fed. (2d) 292 (295), the Act

“Confers broad equitable powers upon the Court giving it power to grant injunction, enter an order of restitution or any other equitable order conducive to proper enforcement of the Act.

“The limitations on the power of the Court to proceed under the provision of this section are governed by equitable principle.”

The requirement that some equitable need must be served in order to justify the granting of an order of restitution and that such an order is not to be granted in every case merely upon the showing of an over-charge

is recognized in *Porter v. Warner Holding Company* (Supra).

“It (order of restitution) may be considered as an equitable adjunct to an injunction decree. Nothing is more clearly a part of the subject matter of a suit for an injunction than a recovery of that which has been illegally acquired and which has given rise to the necessity for injunctive relief. To be sure, such a recovery could not be obtained through an independent suit in equity if an adequate legal remedy were available.” (p. 399.)

In a later proceeding in this same case it was said:

“ . . . it was for the District Court in the exercise of its discretion to decide whether it should make an order of restitution” *Warner Holding Company v. Creedon*, 116 Fed. (2d) 119 (p. 122).

The District Court after hearing all of the evidence and the argument of counsel both upon conclusion of the trial and upon motion to reconsider, determined that no equitable purpose would be served by granting the plaintiff either an injunction or an order of restitution.

Appellant concedes (Brief p. 5) that the Court was justified in denying its prayer for an injunction. Clearly if the Court had authority to deny this relief which was specifically provided under the Act it would have authority to deny relief in the form of restitution when it found there was no equitable justification for it.

CONCLUSION

It is respectfully submitted that the Findings and Conclusions of the District Court were proper and that the decree based thereon should be affirmed.

MCDANNELL BROWN,
Attorney for Appellee.

